

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ST. LOUIS HEART CENTER, INC.,)	
individually and on behalf of others similarly)	
situated,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
CAREMARK, L.L.C.,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant Caremark, L.L.C. (“Defendant”), by and through its undersigned attorneys, Armstrong Teasdale and Foley & Lardner LLP, hereby respectfully removes the above-captioned case from the St. Louis County Circuit Court, Missouri, Case No. 12SL-CC03793, to the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446. Defendant removes this case to this Court because it involves claims by Plaintiff under the Telephone Consumer Protection Act, 47 U.S.C. § 227. Defendant sets forth the grounds for removal below.

BACKGROUND

1. On October 4, 2012, Plaintiff St. Louis Heart Center, Inc. (“Plaintiff”) filed a Class Action Petition (“Petition”) in the St. Louis County Circuit Court, Missouri, Case No. 12SLCC03793. Defendant was served with a summons and the state court petition on October 18, 2012. This action is therefore timely removed pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty (30) days from the date that Defendant was served with a copy of Plaintiff’s Petition. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999)

(holding that the thirty (30) day removal period does not begin to run until defendant is formally served); *Marano Enters. Of Kansas v. Z-Teca Rests., L.P.*, 254 F.3d 753, 756-57 (8th Cir. 2001) (same).

2. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 2.03, a complete copy of the court file from the St. Louis County Circuit Court, Missouri, including true and correct copies of Plaintiff's Petition and all other process, pleadings and orders received by Defendant, is attached here as Exhibit A.

3. Plaintiff's Petition alleges that Defendant violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, by allegedly faxing an "advertisement" to Plaintiff, as well as the putative class members, without the recipients' permission. (Petition, ¶¶ 1-5)

4. Plaintiff's Petition also alleges claims for common law conversion and violations of the Missouri Consumer Fraud and Deceptive Business Practices Act ("MMPA"), Mo. Rev. Stat. Chapter 407, based on the same alleged conduct. (Petition at ¶ 4)

FEDERAL QUESTION JURISDICTION

5. The action Plaintiff has filed in state court is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because the action asserts claims under the TCPA, which "aris[es] under" the "laws . . . of the United States." *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 742 (2012).

6. This Court has supplemental jurisdiction over the remaining state law claims for conversion and violation of the MMPA pursuant to 28 U.S.C. §§ 1367(a) because those claims are so related to the federal TCPA claim that they form part of the same case or controversy. Moreover, Plaintiff's claims do not raise novel or complex issues of Missouri law, and the state law claims do not predominate over Plaintiff's federal TCPA claim.

7. Venue is proper because the St. Louis County Circuit Court, Missouri is within the United States District Court for the Eastern District of Missouri, Eastern Division. *See* 28 U.S.C. §§ 110, 1441(a) and 1445(a).

WRITTEN NOTICE OF REMOVAL HAS BEEN SUPPLIED TO PLAINTIFF

8. Defendant has given written notice of the filing of this Notice of Removal to Plaintiff and is filing a copy of this Notice of Removal with the Clerk of the Circuit Court of St. Louis County, Missouri.

ADDITIONAL PROCEDURAL REQUIREMENTS

9. Pursuant to Local Rules 2.02 and 2.03, the Original Filing Form is filed herewith.

10. Pursuant to Local Rules 2.02 and 2.03, the Civil Cover Sheet is filed herewith.

WHEREFORE, Defendant Caremark, L.L.C. removes this action from the Circuit Court of St. Louis County, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division and requests that the Court exercise its subject matter jurisdiction over this matter, and grant such other and further relief as it deems just and proper.

Respectfully submitted,

By: /s/Thomas B. Weaver

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Attorneys for Defendant Caremark, L.L.C.

CERTIFICATE OF SERVICE

I, Thomas B. Weaver, hereby certify that on November 16, 2012, I caused a copy of the foregoing to be served the parties listed below by U.S. Mail:

Max G. Margulis
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/s/ Thomas B. Weaver